

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA

In the Matter of the Application of the City of Bakersfield to construct Akers Road, a public street, across the tracks of the Union Pacific Railroad Company (Operated by the San Joaquin Valley Railroad) in City of Bakersfield, County of Kern.	Application 02-04-037
In the Matter of the Application of the City of Bakersfield to construct Harris Road, a public street, across the tracks of the Union Pacific Railroad Company (Operated by the San Joaquin Valley Railroad) in City of Bakersfield, County of Kern.	Application 02-04-038
In the Matter of the Application of the City of Bakersfield to construct Mountain Vista Drive, a public street, across the tracks of the Union Pacific Railroad Company (Operated by the San Joaquin Valley Railroad) in City of Bakersfield, County of Kern.	Application 02-04-039
In the Matter of the Application of the City of Bakersfield to construct Old River Road, a public street, across the tracks of the Union Pacific Railroad Company (Operated by the San Joaquin Valley Railroad) in City of Bakersfield, County of Kern.	Application 02-04-040

ADMINISTRATIVE LAW JUDGE'S RULING TO CONSOLIDATE
PROCEEDING, DENY STAFF MOTION TO FILE LATE PROTEST,
SET A PREHEARING CONFERENCE AND ESTABLISH
A TEMPORARY SERVICE LIST

This ruling consolidates the above four applications into a single proceeding, denies staff's motion for leave to file late protest, sets a prehearing conference (PHC) and establishes a temporary service list for the proceeding.

Consolidation

Application (A.) 02-04-037, A.02-04-038, A.02-04-039, and A.02-04-040 were all filed by the City of Bakersfield (City) on April 19, 2002. Each application requests authority to construct an at-grade railroad crossing over tracks owned by the Union Pacific Railroad Company (UPRR) and operated by the San Joaquin Valley Railroad (SJVR). Rule 55 of the Commission's Rules of Practice and Procedure (Rules) allows for consolidation of proceedings involving related questions of fact or law. Accordingly, these four applications will be consolidated into one proceeding.

Staff's Motion for Leave to File Late Protest

The four applications were first noticed in the Commission's Daily Calendar on April 25, 2002. Rule 44.1 of the Rules requires that protests must be filed within 30 days of the first calendar notice. Staff of the Commission's Consumer Protection and Safety Division (staff) filed a protest and concurrent motion for leave to file late protest on January 7, 2003, nine months after the applications were filed and eight months after the protest period ended. The staff protest discussed various concerns regarding the need for and practicability of the proposed crossings. In its motion, staff asserts it discussed the applications with the two involved railroad companies (UPRR and SJVR) in July 2002 (three months after the applications were filed). Staff also performed a diagnostic safety review of the proposed crossings and met with City representatives in October 2002 (six months after application filing). Staff was advised by both railroads that each would file protests, but neither did. Waiting for the railroads to file protests was staff's primary reason for its late filing. Staff eventually filed its own protest in January 2003.

On January 23, 2003, the City filed an opposition to the staff protest and motion. The City asserted that staff was aware of the applications and able to file its own timely protest. The City also advised that no changes had occurred in the design or plans of each crossing since the application filing date. Rule 87 of the Rules allows for deviations from the rules in special cases and for good cause. The City contends that good cause for a late-filed protest cannot be shown simply because of the failure of the railroads to act. On October 8, 2003, the City filed a motion requesting the Commission to approve the four applications as no valid protests or responses to the applications have been filed.

By this ruling, the staff motion for leave to file late protest is denied. Any concerns relating to the need, practicability or safety of the proposed crossings will be addressed directly with applicant at the prehearing conference. All interested parties, including staff, will have the opportunity to comment on the draft decision, as allowed by Rule 77.2 of the Rules.

Prehearing Conference

A hearing is not anticipated in this proceeding. However, a PHC is set for December 3, 2003, at 1:00 p.m., in the Commission Hearing Room, 505 Van Ness Avenue, San Francisco, CA 94102. Any parties wishing to participate by telephone must contact the Commission's Calendar Clerk at (415) 703-1203, at least five working days beforehand. The purpose of the PHC is to discuss:

1. Applicant's compliance with Rule 38(d) of the Rules (relating to grade crossing applications).
2. Applicant's compliance with Rule 17.1 of the Rules (relating to environmental impact reports).
3. If necessary, establishing a permanent service list to the proceeding. A temporary service list is attached for use beforehand.
4. Any other procedural issues.

Establish Temporary Service List

A temporary service list is attached to this ruling. If necessary, a permanent service list will be established during the PHC.

IT IS RULED that:

1. A.02-04-037, A.02-04-038, A.02-04-039, and A.02-04-40 are consolidated into one proceeding.
2. The staff motion for leave to file late protest, filed on January 7, 2003, is denied for failure to show good cause for the late filing.
3. A prehearing conference in this matter is scheduled for December 3, 2003, at 1:00 p.m., in the Commission Hearing Room, 505 Van Ness Avenue, San Francisco, CA 94102. Parties wishing to participate by telephone must contact the Commission's Calendar Clerk at (415) 703-1203 at least five working days beforehand.
4. A temporary service list in this proceeding is established and attached to this ruling. If necessary, a permanent service list will be established at the conclusion of the prehearing conference.

Dated November 12, 2003, at San Francisco, California.

/s/ KENNETH L. KOSS

Kenneth L. Koss
Administrative Law Judge

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CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge’s Ruling to Consolidate Proceeding, Deny Staff Motion to File Late Protest, Set a Prehearing Conference and Establish a Temporary Service List on all parties of record in this proceeding or their attorneys of record.

Dated November 12, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission’s policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.